

IN THE SENATE OF THE UNITED STATES.

APRIL 13, 1880.—Ordered to be printed.

Mr. COCKRELL, from the Committee on Military Affairs, submitted the following

REPORT:

[To accompany bill S. 1336.]

The Committee on Military Affairs, to whom was referred the bill (S. 1336) for the relief of John Reed, have carefully examined the same, and submit the following report:

This bill directs the Secretary of the Treasury to pay to John Reed, late a corporal in Company D, First Regiment Arkansas Cavalry Volunteers, the sum of \$150 as the value of a horse lost in the service of the United States during the late war.

Your committee applied to the Secretary of War for the military history and record of claimant, and received through him the following, to-wit:

WAR DEPARTMENT, ADJUTANT-GENERAL'S OFFICE,
Washington, D. C., March 10, 1880.

SIR: I have the honor to acknowledge the receipt of your letter of the 4th day of March, 1880, requesting a "statement of service" of John Reed. The following information has been obtained from the files of this office, and is respectfully furnished in reply to your inquiry:

It appears from the rolls on file in this office that John Reed was enrolled on the 22d day of July, 1862, at Carroll County, Ark., in Company K, First Regiment of Arkansas Cavalry Volunteers, to serve three years, or during the war, and mustered into service as a private on the 7th day of August, 1862, at Springfield, Mo., in Company K, First Regiment Arkansas Cavalry Volunteers, to serve three years, or during the war. On the muster roll of Company D of that regiment (to which transferred), from enrollment to December 31, 1862, he is reported private, present; January and February, 1863, absent at home sick. Present on subsequent rolls to December 31, 1864; January and February, 1865, corporal, present; promoted to corporal to rank from January 1, 1865. March and April, 1865, on detached service as scout; May and June, 1865, present. He was mustered out of service with company as corporal, August 23, 1865, at Fayetteville, Ark. No evidence on rolls of company that he ever kept a private horse in the United States service.

I am, sir, very respectfully, your obedient servant,

S. N. BENJAMIN,
Assistant Adjutant-General.

Your committee was advised by the Secretary of War that the proceedings in regard to the application for the pay of the horse and the action of the department thereon were in the Office of the Third Auditor of the Treasury. Your committee thereupon applied to the Secretary of the Treasury for information touching the presentation of this claim and the action of the department thereon, and received through him the following reports, to-wit:

TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE,
March 9, 1880.

Respectfully returned to the Hon. H. F. French, Assistant Secretary, inclosing also a copy of report disallowing said claim.

This claim was filed in this office April 4, 1867, and the evidence consists of affidavits of the claimant, M. LaRue Harrison, late Col. T. S. Hunt, late Lieut.-Col. W. P. Clarke, late Lieut. William R. Dye, and William M. Rutherford, late private of said regiment.

The records of this class of claimants not being indexed by companies or regiments, it is impracticable to state whether "others of same company have been allowed pay for horses lost at same time" or not, unless the names of the members be furnished; but the facts developed in this case would seem to warrant the presumption that none of the members of said organization have been allowed pay for horses lost in the military service.

E. W. KEIGHTLEY,
Auditor.

TREASURY DEPARTMENT,
HORSE CLAIMS DIVISION,
THIRD AUDITOR'S OFFICE,
Washington, D. C., July 30, 1878.

This is a claim made by John Reed, late private Company K, First Arkansas Cavalry Volunteers, for \$150 as compensation for a mare, alleged by claimant to have been lost August 1, 1863, at Fitzgerald Mountain, Arkansas, while in the military service of the United States.

The official report of the honorable Second Auditor shows that claimant "was not paid for use and risk of horse."

The Adjutant-General, U. S. A., reports that "there is no official evidence that claimant had a horse in the service," nor do the records show that any members of Company K, First Arkansas Cavalry, furnished their own horses.

The claim is, therefore, disallowed.

This report, together with the papers in the case, will be transmitted to the honorable Second Comptroller of the Treasury for his decision thereon.

HORACE AUSTIN,
Auditor.

SECOND COMPTROLLER'S OFFICE,
August 8, 1878.

Respectfully returned to the Third Auditor with my concurrence.

JAS. S. DELANO,
Acting Comptroller.

By the act approved March 3, 1849, vol. 9, Stats. at Large, page 414, appropriate and ample provision is made for the payment for the loss of horses killed or wounded in battle and abandoned, or from other causes where such loss, capture, abandonment, destruction, or death was without any fault or negligence on the part of the owner, and while actually employed in the service of the United States. Section 3 of said act provides:

That the claims provided for under this act shall be adjusted by the Third Auditor, under such rules as shall be prescribed by the Secretary of War, under the direction or with the assent of the President of the United States, as well in regard to the receipt of applications of claimants as the species and degree of evidence, the manner in which such evidence shall be taken and authenticated, which rules shall be such as, in the opinion of the President, shall be best calculated to obtain the object of this act, paying a due regard as well to the claims of individuals' justice as to the interest of the United States, which rules and regulations shall be published for four weeks in such newspapers, in which the laws of the United States are published, as the Secretary of War shall direct.

The claimant alleges that he bought the horse at the price of \$100 of Lieutenant Clark, on the — day of July, 1863, and that the horse was lost on August 1, 1863, in an engagement with the enemy near Fitz-

gerald's Mountain, in Arkansas, being so badly wounded that he had to be abandoned. On March 30, 1867, he presented his claim for the loss of the horse, under the foregoing law and General Orders, No. 113, A. G. O., May 2, 1863.

Sundry affidavits and certificates were filed to establish said claim, and the claim was pending until April 1, 1868, when it was rejected by the Adjutant-General, because "there is no official record that the within-named man had a horse or received pay for use and risk of horse while in service; nor do the records show that any member of Company K, First Arkansas Cavalry, furnished their own horses." The muster-roll of Company D, First Arkansas Cavalry, to which claimant was transferred, to June 30, 1863, shows private John Reed "present and paid, and not paid for use and risk of horse; no remarks." And, on same roll, to September 30, 1863, four-months' roll, is marked in precisely the same words; and on roll to October 31, 1863, he is marked in same way.

Your committee, after having received from the Secretary of the Treasury the foregoing reports of the Auditor, again applied to him for copies of all the evidence accompanying the claim, and was furnished through the Secretary with the said copies, which was all the evidence submitted to or obtained by your committee.

Your committee find that this evidence was submitted to the Auditor, and all of it was considered by him prior to his final decision made on July 30, 1878, at which time the claim was disallowed. The Third Auditor had complete jurisdiction of this claim, and seems to have fairly and impartially considered the whole case according to the law, rules, and regulations in force and the evidence submitted; and were your committee to take jurisdiction anew of this case, after the lapse of seventeen years from its origin, and proceed to decide it according to the laws, regulations, and evidence contained in the muster-rolls, made at the time in the presence of the claimant with his knowledge and approval, and in the sundry affidavits and certificates submitted, it is not prepared to say that the claimant should be allowed his claim.

In the opinion of your committee, it would be impolitic and unwise for Congress to undertake to review, revise, or overrule the decisions of the proper accounting officers in the thousands of cases of claims for loss of horses in the service, wherein the Auditor has full jurisdiction, and has heard and decided the cases according to long-established rules and regulations, and it would be more impolitic and unwise for Congress to attempt to pass upon such claims *de novo*. It certainly should not be done except in purely exceptional cases, whose adjustment is not adequately provided for by existing law.

Your committee therefore report this bill back to the Senate, with the recommendation that the same be indefinitely postponed, and that said claim be not allowed, and that this report be approved.

